



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 230224-0052]

RIN 0648-BL94

Atlantic Highly Migratory Species; Bluefin Tuna (BFT) General Category

Restricted-Fishing Days (RFDs)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS is proposing to set Atlantic BFT General category RFDs for parts of the 2023 and 2024 fishing years. Specifically, when the General category fishery is open, this proposed rule would set RFDs for every Tuesday, Friday, and Saturday from July 1, 2023 through November 30, 2023 and every Tuesday and Friday from December 1, 2023 through March 31, 2024. On an RFD, Atlantic Tunas General category permitted vessels may not fish for (including catch-and-release or tag-and-release fishing), possess, retain, land, or sell BFT. On an RFD, Highly Migratory Species (HMS) Charter/Headboat permitted vessels with a commercial sale endorsement also are subject to these restrictions that preclude fishing commercially for BFT under the General category restrictions and retention limits, but such vessels may still fish for, possess, retain, or land BFT when fishing recreationally under applicable HMS Angling category rules.

DATES: Written comments must be received by *[insert date 30 days after date of publication in the FEDERAL REGISTER]*. NMFS will hold a public hearing via conference call and webinar for this proposed rule on March 23, 2023, from 2 p.m. to 4

p.m. For webinar registration information, see the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2023-0016, by electronic submission. Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter “NOAA-NMFS-2023-0016” in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

Comments sent by any other method, to any other address or individual, or received after the close of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on <https://www.regulations.gov> without change. All personal identifying information (*e.g.*, name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

NMFS will hold a public hearing via conference call and webinar on this proposed rule. For specific location, date and time, see the **SUPPLEMENTARY INFORMATION** section of this document.

Copies of this proposed rule and supporting documents are available from the HMS Management Division website at <https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species> or by contacting Erianna Hammond, erianna.hammond@noaa.gov, or Larry Redd, Jr., larry.redd@noaa.gov, at 301-427-8503.

FOR FURTHER INFORMATION CONTACT: Erianna Hammond, erianna.hammond@noaa.gov, or Larry Redd, Jr., larry.redd@noaa.gov, at 301-427-8503.

SUPPLEMENTARY INFORMATION: Atlantic HMS fisheries, including BFT fisheries, are managed under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*). The 2006 Consolidated Atlantic HMS Fishery Management Plan (2006 Consolidated HMS FMP) and its amendments are implemented by regulations at 50 CFR part 635. Section 635.27 divides the U.S. BFT quota, recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and as implemented by the United States, among the various domestic fishing categories per the allocations established in the 2006 Consolidated HMS FMP and its amendments. Section 635.23 specifies the retention limit provisions for Atlantic Tunas General category permitted vessels and HMS Charter/Headboat permitted vessels, including regarding RFDs.

RFDs are used as an effort control to ensure that BFT quotas and subquotas are not exceeded. As described in § 635.27(a), the current baseline U.S. quota is 1,316.14 metric tons (mt) (not including the 25 mt ICCAT allocated to the United States to account for bycatch of BFT in pelagic longline fisheries in the Northeast Distant Gear Restricted Area). The baseline quota for the General category is 710.7 mt. Each of the General category time periods (January through March, June through August, September, October through November, and December) are allocated a portion of the annual General category quota.

Background

NMFS first established the regulatory authority to set “no fishing” days in a 1995 rule (60 FR 38505, July 27, 1995) as an available effort control that could be used to extend the General category time period subquotas while providing additional inseason management flexibility with regard to quota use and season length. An RFD is a day, established ahead of time through a schedule published in the **Federal Register**, on

which NMFS sets the BFT retention limit at zero for certain categories of permit holders. Specifically, on an RFD, vessels permitted in the Atlantic Tunas General category are prohibited from fishing for (including catch-and-release and tag-and-release fishing), possessing, retaining, landing, or selling BFT (§ 635.23(a)(2)). RFDs also apply to HMS Charter/Headboat permitted vessels to preclude fishing commercially under General category restrictions and retention limits on those days but do not preclude such vessels from recreational fishing activity under applicable Angling category regulations, including catch-and-release and tag-and-release fishing (§ 635.23(c)(2)).

NMFS may waive previously scheduled RFDs under certain circumstances. Consistent with § 635.23(a)(4), NMFS may waive an RFD by adjusting the daily BFT retention limit from zero up to five on specified RFDs after considering the inseason adjustment determination criteria at § 635.27(a)(7). Considerations include, among other things, review of dealer reports, daily landing trends, and the availability of BFT on fishing grounds. NMFS would announce any such waiver by filing a retention limit adjustment with the Office of the Federal Register for publication. Such adjustments would be effective no less than 3 calendar days after the date of filing for public inspection with the Office of the Federal Register. NMFS also may waive previously designated RFDs effective upon closure of the General category fishery so that persons aboard vessels permitted in the General category may conduct catch-and-release or tag-and-release fishing for BFT under § 635.26(a). NMFS would not modify the previously scheduled RFDs during the fishing year in other ways (such as changing an RFD from one date to another or adding RFDs).

Due to increased BFT landings rates in the General category in 2019 and 2020 and numerous requests from members of the Atlantic HMS Advisory Panel, General category participants, and Atlantic tunas dealers, NMFS resumed the use of RFDs in 2021 for the first time since 2007 (86 FR 25992, May 12, 2021; 86 FR 43421, August 9,

2021). In 2022, because the use of RFDs in 2021 succeeded in extending fishing opportunities through a greater portion of the relevant General category time periods and the fishing season overall, consistent with management objectives for the fishery, NMFS implemented RFDs on every Tuesday, Friday, and Saturday from July 1 through November 30 while the fishery was open (87 FR 12643, March 7, 2022; 87 FR 33056, June 1, 2022). Similar to the 2021 and 2022 rulemakings, NMFS is proposing an RFD schedule to extend fishing opportunities through a greater portion of the relevant General category time periods and the fishing season overall, consistent with management objectives for the fishery. Based on comments received on the 2022 rulemaking and on comments received throughout 2022, as described below, NMFS is also proposing to extend the use of RFDs to the December 2023 and January through March 2024 time periods.

Proposed RFD Schedule

In this proposed rule, NMFS proposes to schedule RFDs every Tuesday, Friday, and Saturday from July 1, 2023 through November 30, 2023 and every Tuesday and Friday from December 1, 2023 through March 31, 2024, while the fishery is open. On these designated RFDs, persons aboard vessels permitted in the General category would be prohibited from fishing for (including catch-and-release and tag-and-release fishing), possessing, retaining, landing, or selling BFT. Persons aboard HMS Charter/Headboat permitted vessels with a commercial sale endorsement also would be prohibited from fishing commercially for BFT. Persons aboard all HMS Charter/Headboat permitted vessels (including those with a commercial sale endorsement) could fish recreationally for BFT under the applicable Angling category restrictions and retention limits.

From July 1 through November 30, 2023, NMFS is proposing the same weekly schedule as the 2021 and 2022 RFD schedule (*i.e.*, every Tuesday, Friday, and Saturday). Unlike in 2021 and 2022, NMFS is also proposing to extend RFDs to the “winter” fishery

(*i.e.*, the December and January through March time periods). Specifically, from December 1, 2023 through March 31, 2024, NMFS proposes two RFDs per week (*i.e.*, every Tuesday and Friday) while the fishery is open. This proposed schedule and extension is based on general feedback provided by members of the Atlantic HMS Advisory Panel, General category participants, and Atlantic tunas dealers in 2022; a review of average daily landings rate data for recent years; a review of past years' RFD schedules (including the most recent 2022 RFD schedule); and a review of past closure dates prior to RFDs being set in 2021. Considering that information, NMFS believes that a schedule of RFDs from July 2023 through March 2024 should continue to increase the likelihood of pacing General category landings to extend fishing opportunities through a greater portion of the General category time periods. In the July through November time periods, the schedule would allow for 2-consecutive 2-day periods each week (Sunday-Monday; Wednesday-Thursday) for BFT product to move through the market and allow for some commercial fishing activity each weekend (Sunday). In the December and January through March time periods it would allow for extended fishing opportunities while pacing the BFT landings over a greater portion of the General category time periods.

In 2022, NMFS received some comments suggesting an increase from 3 to 4 RFDs during the July through November time periods. Based on the landings data, if NMFS were to consider an additional day to the current schedule, Sunday would appear to be the best fit because it has the highest landings rates of the remaining days (*i.e.*, Sunday, Monday, Wednesday, and Thursday). In 2022 after the final RFD schedule published, NMFS received requests to establish a weekly schedule consisting of 3 RFDs in a row such as Thursday, Friday, and Saturday. These requests stated that a block of days would better assist the BFT product to move through the market, assist with enforcement, and assist the industry with 3 consecutive days off. NMFS is not proposing

either requested schedule at this time because NMFS believes it would provide less flexibility for fishermen and could be disruptive to tournaments and businesses that are planning for 2023 based on what occurred in 2022. However, in this **Federal Register** proposed rule, NMFS requests public comments on:

- Whether July through November RFDs should be established for 4 days per week instead of 3, and if so, what the fourth day should be, and
- Whether July through November RFDs should be scheduled for 3 or 4 consecutive days and if that schedule would be less disruptive than the proposed schedule that allows for 2-consecutive 2-day periods each week (Sunday - Monday; Wednesday - Thursday) for BFT product to move through the market.

Additionally, in 2022, NMFS received requests from some winter fishery participants to extend RFDs into both the December and the January through March time periods. These dealers and General category participants suggested that establishing RFDs in these General category time periods would assist in facilitating entry of BFT product to the market while also allowing rest days for commercial BFT fishermen. Over the last 6 years, closure of the December time period has been necessary in 2017, 2020, 2021, and 2022, with the fishery remaining open through the end of the month in 2018 and 2019. Similarly, over the last 6 years, closure of the January through March time period has been necessary every year for 2017 through 2022. Based on these requests and to extend fishing opportunities throughout the December and January through March time periods, NMFS proposes RFDs for the December 2023 and the January through March 2024 time periods. NMFS is proposing only Tuesday and Friday as RFDs for these time periods because these days have the highest landings rates and because of concerns that 3 or more days per week may be too restrictive given the potential for inclement winter weather. In this proposed rule, NMFS specifically requests public

comment on how many RFDs per week would be appropriate during these time periods and which days may be most beneficial.

Under existing regulations, based on consideration of regulatory criteria at § 635.27(a)(7), NMFS may waive certain RFDs consistent with § 635.23(a)(4), either by adjusting the retention limit upwards on a previously-scheduled RFD or by waiving an RFD to allow recreational fishing under the Angling category restrictions and retention limits when the General category closes. Once the schedule is set, however, NMFS would not modify RFDs in other ways (*e.g.*, switching days or adding RFDs).

Request for Comments

NMFS is proposing a schedule of RFDs for every Tuesday, Friday, and Saturday from July 1, 2023, through November 30, 2023. Additionally, NMFS is proposing a schedule of RFDs for every Tuesday and Friday from December 1, 2023 through March 31, 2024. NMFS is requesting comments on this proposed RFD schedule. NMFS is also specifically requesting comments on: (1) whether July through November RFDs should be 4 days per week instead of 3, and if so, what the fourth day should be; (2) whether July through November RFDs should be scheduled for 3 or 4 consecutive days and if that schedule would be less disruptive than the proposed schedule that allows for 2-consecutive 2-day periods each week (Sunday-Monday; Wednesday-Thursday) for BFT product to move through the market; and (3) whether the December through March RFD 2 day per week schedule is appropriate and which days would be the most beneficial for these time periods. Comments on this proposed rule may be submitted via <https://www.regulations.gov> or at a public conference call and webinar. NMFS solicits comments on this action by [*insert date 30 days after date of publication in the FEDERAL REGISTER*] (see **DATES** and **ADDRESSES**).

During the comment period, NMFS will hold a public hearing via conference call and webinar for this proposed action. Requests for sign language interpretation or other

auxiliary aids should be directed to Erianna Hammond at *Erianna.hammond@noaa.gov* or 301-427-8503, at least 7 days prior to the meeting.

The conference call and webinar will take place on March 23, 2023 from 2:00 to 4:00 pm. Information for registering and accessing the webinars can be found at <https://www.fisheries.noaa.gov/action/proposed-restricted-fishing-days-atlantic-bluefin-tuna-fishery-parts-2023-and-2024>.

The public is reminded that NMFS expects participants at conference calls and webinars to conduct themselves appropriately. At the beginning of each conference call and webinar, the moderator will explain how the conference call and webinar will be conducted and how and when participants can provide comments. NMFS representative(s) will structure the conference call and webinar so that all members of the public will be able to comment, if they so choose, regardless of the controversial nature of the subject(s). Participants are expected to respect the ground rules, and those that do not may be asked to leave the conference calls and webinars.

Classification

The NMFS Assistant Administrator has determined that this proposed rule is consistent with the 2006 Consolidated HMS FMP and its amendments, other provisions of the Magnuson-Stevens Act, ATCA, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

An Initial Regulatory Flexibility Analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble.

Section 603(b)(1) of the RFA requires agencies to describe the reasons why the action is being considered. The purpose of this proposed rulemaking is, consistent with the objectives of the 2006 Consolidated HMS FMP and its amendments, the Magnuson-Stevens Act, ATCA, and other applicable law, to potentially set a schedule of BFT RFDs for parts of the 2023 and 2024 fishing years as an effort control for the General category quota and to extend General category fishing opportunities through a greater portion of the General category time period subquotas. Implementation of the proposal would further the management goals and objectives in the 2006 Consolidated HMS FMP and its amendments.

Section 603(b)(2) of the RFA requires agencies to state the objectives of, and legal basis for, the proposed action. The objective of this proposed rulemaking is to set a schedule of BFT RFDs for parts of the 2023 and 2024 fishing year to increase the likelihood of pacing General category landings to extend fishing opportunities through a greater portion of the General category time periods (similar to the 2022 RFD schedule). The legal basis for the proposed rule is the Magnuson-Stevens Act and ATCA.

Section 603(b)(3) of the RFA requires agencies to provide an estimate of the number of small entities to which the rule would apply. NMFS established a small business size standard of \$11 million in annual gross receipts for all businesses in the commercial fishing industry (NAICS 11411) for RFA compliance purposes. The Small Business Administration (SBA) has established size standards for all other major industry sectors in the United States, including the scenic and sightseeing transportation (water) sector (NAICS code 487210), which includes for-hire (charter/party boat) fishing entities. The SBA has defined a small entity under the scenic and sightseeing transportation (water) sector as one with average annual receipts (revenue) of less than \$14.0 million. NMFS considers all HMS permit holders, both commercial and for-hire, to be small entities because they had average annual receipts of less than their respective sector's

standard of \$11 million and \$8 million. The 2021 total ex-vessel annual revenue for the BFT fishery was \$11.8 million. Since a small business is defined as having annual receipts not in excess of \$11.0 million, each individual BFT permit holder would fall within the small entity definition. The numbers of relevant annual Atlantic Tunas or Atlantic HMS permits as of October 2022 are as follows: 2,630 General category permit holders and 4,175 HMS Charter/Headboat permit holders, of which 1,873 hold HMS Charter/Headboat permits with a commercial sale endorsement.

Section 603(b)(4) of the RFA requires agencies to describe any new reporting, record-keeping, and other compliance requirements. This proposed rule does not contain any new collection of information, reporting, or record-keeping requirements. This proposed rule would set a schedule of RFDs for parts of 2023 and 2024 as an effort control for the General category.

Under section 603(b)(5) of the RFA, agencies must identify, to the extent practicable, relevant Federal rules which duplicate, overlap, or conflict with the proposed action. Fishermen, dealers, and managers in these fisheries must comply with a number of international agreements, domestic laws, and other fishery management measures. These include, but are not limited to, the Magnuson-Stevens Act, ATCA, the High Seas Fishing Compliance Act, the Marine Mammal Protection Act, the Endangered Species Act, the National Environmental Policy Act, the Paperwork Reduction Act, and the Coastal Zone Management Act. This proposed action has been determined not to duplicate, overlap, or conflict with any Federal rules.

Under section 603(c) of the RFA, agencies must describe any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. Specifically, the RFA (5 U.S.C. 603(c)(1)-(4)) lists four general categories of significant alternatives to assist an agency in the development of significant

alternatives. These categories of alternatives are: (1) establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; and (4) exemptions from coverage of the rule, or any part thereof, for small entities.

Regarding the first, second, and fourth categories, NMFS cannot establish differing compliance or reporting requirements for small entities or exempt small entities from coverage of the rule or parts of it, because all of the businesses impacted by this rule are considered small entities, and thus the requirements are already designed for small entities. Regarding the third category, NMFS does not know of any performance or design standards that would satisfy the aforementioned objectives of this rulemaking.

This proposed rule would not change the U.S. BFT quotas or implement any new management measures not previously considered under the 2006 Consolidated HMS FMP and its amendments. NMFS proposes continuation of the use of RFDs for the General category for parts of 2023 and 2024 to provide the regulated community the opportunity to comment on the proposed RFD schedule. Under the regulations, when a General category time period subquota is reached or projected to be reached, NMFS closes the General category fishery. Retaining, possessing, or landing BFT under that quota category is prohibited on and after the effective date and time of a closure notice for that category, for the remainder of the fishing year, until the opening of the subsequent time period or until such date as specified. In recent years, these closures, if needed, have generally occurred toward the end of a time period. NMFS notes that market-based factors may affect the length of time before any particular time period closes, but believes that RFDs are still needed to provide a pre-scheduled, consistent approach across the fishery. According to communications with dealers and fishermen,

several of the high-volume Atlantic tunas dealers in 2019, 2020, and 2022 were limiting their purchases of BFT and buying no or very few BFT (such as harpooned fish only) on certain days during the beginning portion of the June through August time period in order to extend the available quota until later in the time period given market considerations. While these actions may have lengthened the time before any particular time period was closed, there were negative impacts experienced by some General category and Charter/Headboat permitted fishermen, who could not find buyers for their BFT. In 2021, NMFS set pre-scheduled RFDs for the General category fishery on certain days (Tuesdays, Fridays, and Saturdays) from September through November to increase the likelihood of pacing General category landings to extend fishing opportunities through a greater portion of the General category time periods (August 9, 2021, 86 FR 43421). In 2022, NMFS set pre-scheduled RFDs for the same days from July through November (June 1, 2022, 87 FR 33056).

Table 1 shows the General category closure dates by time period for 2018 through 2022. The General category remained open for the entire duration of the June through August time period in 2018 and 2020, and of the December time period in 2018 and 2019. The October through November time period tends to close the earliest of any time period, and NMFS often receives requests to reopen that time period. Following the consideration of numerous factors (*i.e.*, daily landings rates, weather conditions, available quota, *etc.*), NMFS reopened the October through November time period in 2018 and 2020. In 2021, NMFS set RFDs for the September through November time periods, resulting in the General category fishing extending late into September and through the end of October through November time period. In 2022, NMFS set RFDs for the June through November time periods, with the first RFD established on July 1. Closure dates for 2022 were February 11, August 10, September 19, October 24, and December 10, respectively, for each time period. NMFS believes that the relatively early closure dates

in 2022 were due in part to high daily landings rates when the time periods were open in the summer and fall. Based on a review of average daily landings rates, without the use of RFDs, NMFS likely would have needed to close the June through November time periods much earlier if the RFDs were not in place. These high landings rates continued into December 2022, resulting in that time period closing after 10 days, much earlier than in 2018 through 2021. The use of RFDs in 2022 from June through November paced the landings as much as possible and extended the fishing opportunities for the June through November time periods. The current proposal to extend RFDs into December of 2023 and January through March of 2024 should similarly increase fishing opportunities throughout all time periods.

Table 1 – General Category Closure Dates by Time Period (2018-2022)

Year	Time Period				
	January through March	June through August	September	October through November	December
2018	Mar 2	Aug 31	Sept 23	Closed Oct 5; Reopened Oct 31 through Nov 2; Reopened Nov 12 through Nov 26	Dec 31
2019	Feb 28	Aug 8	Sept 13	Oct 13	Dec 31
2020	Feb 24	Aug 31	Sept 27	Closed Oct 9; Reopened Oct 28-29; Reopened Nov 7-8	Dec 14
2021	Feb 27	Aug 4	Sept 23	Nov 30	Closed Dec 14; Reopened Dec 20-23
2022	Feb 11	Aug 10	Sept 19	Oct 24	Dec 10

Table 2 shows the average ex-vessel price per pound of BFT during each General category time period for 2018 through 2022 adjusted to real 2022 dollars using the Gross Domestic Product (GDP) deflator. Ex-vessel price per pound was lower for the September time period, with an average (2018 through 2022) of \$6.65, and varied over the summer and fall period, with averages of \$6.97 for the June through August time

period and \$7.03 for the October through November time period. In 2022, the average price per pound was higher for the January through March time period compared to the average price per pound during the time periods in 2021. In most time periods, the 2022 average price per pound was also higher than the 2020 average price per pound. NMFS believes that this increase in average price was in part due to the use of RFDs in 2022.

Table 2 -- Average Ex-Vessel Price per Pound (\$) of BFT by General Category Time Period (2018-2022) Adjusted to Real 2022 Dollars*

Year	Time Period				
	January through March	June through August	September	October through November	December
2018	\$8.72	\$8.05	\$7.59	\$8.75	\$11.03
2019	\$6.97	\$6.41	\$7.25	\$6.28	\$13.91
2020	\$6.93	\$5.56	\$5.86	\$6.27	\$6.44
2021**	\$6.87	\$7.53	\$6.53	\$7.78	\$8.97
2022**	\$8.76	\$7.30	\$6.02	\$6.09	\$7.19
2018 through 2022 average	\$7.65	\$6.97	\$6.65	\$7.03	\$9.51

*Adjusted using the Gross Domestic Product (GDP) Deflator.

** The October through November and December numbers do not use the 4th quarter GDP Deflator because it is not yet currently available.

Table 3 shows the number and total weight of BFT that were landed but not sold by fishermen fishing under the General category quota for 2018 through 2022. The number and weight of unsold BFT increased from 2018 through 2022 with a peak in 2020 (143 BFT and 25.8 mt) in part due to the COVID-19 pandemic, and substantial decrease in 2021 (from 143 to 12 BFT and 25.8 mt to 2.0 mt), followed by an increase in 2022 (48 BFT and 9.1 mt). NMFS believes this increase is in part due to an influx of domestically caught BFT entering the market at one time resulting in dealers limiting their purchases of BFT leading to General category participants. This situation resulted in unprecedented high landings days in several time periods and BFT fishermen having a difficult time finding buyers for landed BFT.

Table 3 -- Number (Count) and Weight (mt) of BFT Landed but Unsold by General Category Participants by Year (2018-2022)

Year	Count	Weight (mt)
2018	14	2.6
2019	20	3.8
2020	143	25.8
2021	12	2.0
2022	48	9.1
Total	237	43.3

NMFS is proposing to establish a schedule of RFDs for parts of the 2023 and 2024 fishing years that would specify days on which fishing and sales will not occur. Specifically, for the 3 time periods from June through November, the proposed schedule allows for 2-consecutive 2-day periods each week for BFT product to move through the market while also allowing some commercial fishing activity to occur each weekend (*i.e.*, Sundays). For the December and January through March time periods, the proposed schedule would allow for extended fishing opportunity while pacing the BFT landings over a span of time. Because this schedule of RFDs would apply to all participants equally, NMFS anticipates that this schedule would extend fishing opportunities through a greater proportion of the time periods in which they apply by spreading fishing effort out over time similar to the 2022 fishing season. Further, to the extent that the ex-vessel revenue for a BFT sold by a General or HMS Charter/Headboat permitted vessel (with a commercial endorsement) may be higher when a lower volume of domestically caught BFT is on the market at one time, the use of RFDs may result in some increase in BFT price, and the value of the General category time period subquotas could increase similar to that of 2022. Thus, although NMFS anticipates that the same overall amount of the General category quota would be landed as well as the same amount of BFT landed per vessel, there may be some positive impacts to the General category and Charter/Headboat (commercial) BFT fishery small businesses. Using RFDs may more equitably distribute

fishing opportunities across all permitted vessels for longer durations within each General category time period.

If NMFS does not implement a schedule, without any other changes, it is possible that the General category could have fewer open days later in the fishing season when ex-vessel prices tend to be higher (Table 1) as observed in 2018 through 2022. Additionally, without RFDs the trends of increasing numbers of unsold BFT (Table 3) and decreasing ex-vessel prices (Table 2) from 2018 through 2020 could continue. If those trends were to continue, all active General category permit holders could experience negative economic impacts similar to 2019, 2020, and 2022 where dealers were limiting their purchases of BFT and buying no or very few BFT on certain days in order to extend the available quota.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Statistics, Treaties.

Dated: February 27, 2023.

Samuel D. Rauch, III

Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

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